**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF VIRGINIA**
CHARLOTTESVILLE DIVISION

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| BRENNAN M. GILMORE,<br><br>*Plaintiff,*<br><br>v.<br><br>ALEXANDER JONES, ET AL.,<br><br>*Defendants* | CASE NO.: 3:18-CV-00017-NKM-JCH<br><br>**BRIEF IN SUPPORT OF JOINT MOTION FOR LEAVE TO SUPPLEMENT MOTION TO RECONSIDER OR TO CERTIFY INTERLOCUTORY APPEAL OF DEFENDANTS WILBURN, HICKFORD, HOFT, CREIGHTON, AND WORDS-N-IDEAS, LLC** |

# TABLE OF AUTHORITIES

## CASES



### STATUTES AND COURT RULES

## FACTS

On May 9, 2019, Defendants Wilburn, Hickford, Hoft, Creighton, and Words-N-Ideas, LLC (the "Undersigned Defendants") submitted a "Joint Motion to Reconsider this Court's Finding of Personal Jurisdiction or to Certify the Question for Interlocutory Appeal" (hereinafter the "Motion") (Dkt. 137), asking this Court to either reconsider its March 29 Order and Opinion (Dkts. 123 and 124) denying the Undersigned Defendants' motion to dismiss on personal jurisdiction grounds or, in the alternative, asking this Court to certify the question of jurisdiction for interlocutory appeal. The Motion was fully briefed when the same defendants filed their reply on June 6, 2019 (Dkt. 148).

After briefing had ended, the Fourth Circuit has issued a major opinion regarding when a district court *must* certify a question for interlocutory appeal, *In re Trump*, 928 F.3d 360 (4th Cir. 2019).[1]

## I.
## THIS COURT SHOULD GRANT THE UNDERSIGNED DEFENDANTS LEAVE TO SUPPLEMENT THEIR MOTION IN LIGHT OF NEW CONTROLLING PRECEDENT ISSUED BY THE FOURTH CIRCUIT

As stated above, after briefing had ended on the motion to reconsider or to certify for interlocutory appeal, the Fourth Circuit decided *In re Trump*, a major ruling indicating when it is mandatory for district courts to certify questions for interlocutory appeal. The use of the word "mandatory" in the prior sentence is deliberate. *In re Trump* is a mandamus case, in which the Fourth Circuit held that it was an *abuse of discretion* to deny certification of an interlocutory appeal under 28 U.S.C. § 1292(b). As one might imagine from that procedural posture, the Fourth Circuit took the opportunity to expound in some detail on the standards under which certification of a

[1] Undersigned counsel originally intended to bring this new authority to this Court's attention during oral argument on September 5, 2019, until that hearing was canceled (Dkt. 155).

question for interlocutory appeal should—and indeed *must*—be granted. It provides a unique insight rarely given into how the Fourth Circuit interprets § 1292(b) and significantly supports the Undersigned Defendants' argument for certification of interlocutory appeal.

The Undersigned Defendants do not wish to bury this Court in papers, and undersigned counsel only proposes this supplement because *In re Trump* might have a significant impact on consideration of the Undersigned Defendants' Motion. The proposed supplement is attached to the underlying motion for leave to supplement. The proposed supplement itself is only seven pages (not counting the Table of Contents, Table of Authorities and signature page). Thus, the supplement 1) is not very long and 2) concerns a case that should be brought to this Court's attention when determining whether to certify a question for interlocutory appeal. In the spirit of fairness, the proposed order gives the other parties an ordinary opportunity to respond in line with the local rules. See W.D.VA R. 11(c)(1). Accordingly, this motion should be granted.

Monday, August 26, 2019

Respectfully submitted,

*s/ Aaron J. Walker*

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